

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 2, 2003

AMENDED IN SENATE JANUARY 9, 2003

SENATE BILL

No. 27

Introduced by Senator Figueroa

(Coauthors: Senators Alpert, Kuehl, Romero, and Soto)

(Coauthors: Assembly Members Hancock, Lieber, and Pavley)

December 2, 2002

An act to amend Sections 1798.80 and 1798.84 of, and to repeal and add Section 1798.83 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Figueroa. Personal information: disclosure to direct marketers.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records by destroying, or arranging for the destruction of, the records, as specified. Any customer injured by a business' violation of these provisions is entitled to recover damages, obtain injunctive relief, or seek other remedies.

This bill would, subject to specified exceptions, require a business that discloses a customer's personal information, including information relating to income or purchases, to a third party for direct marketing purposes to provide the customer, within 30 days after the customer's written request, a written description of the sources and recipients of that information and copies of the information disclosed *or, in certain instances, alternative information, as specified*. The bill would also prohibit a business from conditioning the sale of goods or services on

the customer's consent to that disclosure. In addition to the legal remedies provided under current law, a customer would be entitled to recover a civil penalty, up to \$3,000, and attorneys' fees and costs for a violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. For free market forces to have a role in shaping
2 the privacy practices of California businesses and for "opt-in" and
3 "opt-out" remedies to be effective, Californians must be more
4 than vaguely informed that a business might share personal
5 information with third parties. Consumers must, for these reasons,
6 be informed about what kind of information is disclosed, how
7 frequently, and to what kind of third parties. With these specifics,
8 consumers can knowingly choose to opt-in or opt-out or choose
9 among businesses that disclose information to third parties on the
10 basis of how protective the business is of consumers' privacy.

11 SEC. 2. Section 1798.80 of the Civil Code is amended to read:
12 1798.80. The following definitions apply to this title:

13 (a) "Business" means a sole proprietorship, partnership,
14 corporation, association, or other group, however organized and
15 whether or not organized to operate at a profit, including a
16 financial institution organized, chartered, or holding a license or
17 authorization certificate under the law of this state, any other state,
18 the United States, or of any other country, or the parent or the
19 subsidiary of a financial institution. The term includes an entity
20 that destroys records.

21 (b) "Records" means any material, regardless of the physical
22 form, on which information is recorded or preserved by any
23 means, including in written or spoken words, graphically depicted,
24 printed, or electromagnetically transmitted. "Records" does not
25 include publicly available directories containing information an
26 individual has voluntarily consented to have publicly
27 disseminated or listed, such as name, address, or telephone
28 number.

29 (c) "Customer" means an individual who provides personal
30 information to a business for the purpose of purchasing, renting,



1 or leasing real or personal property or any interest therein or
2 obtaining a service from the business.

3 (d) “Direct marketing purposes” means the use of personal
4 information for marketing or advertising products, goods, or
5 services directly to individuals. “Direct marketing purposes” does
6 not include the use of personal information (1) by bona fide tax
7 exempt charitable or religious organizations to solicit charitable
8 contributions or (2) to raise funds from and communicate with
9 individuals regarding politics and government.

10 (e) “Disclose” means to disclose, release, transfer,
11 disseminate, or otherwise communicate orally, in writing, or by
12 electronic or any other means to any third party.

13 (f) “Established business relationship” means a relationship
14 formed by a voluntary, two-way communication between a
15 business and a customer, with or without an exchange of
16 consideration, for the purpose of purchasing, renting, or leasing
17 real or personal property, or any interest therein, or obtaining a
18 service from the business, if the relationship has not been expressly
19 terminated by the business or customer.

20 (g) “Individual” means a natural person.

21 (h) “Personal information” means any information that
22 identifies, relates to, describes, or is capable of being associated
23 with, a particular individual, including, but not limited to, his or
24 her name, signature, social security number, physical
25 characteristics or description, address, telephone number, passport
26 number, driver’s license or state identification card number,
27 insurance policy number, education, employment, employment
28 history, bank account number, credit card number, debit card
29 number, or any other financial information. “Personal
30 information” also means any data or information pertaining to an
31 individual’s income, assets, liabilities, purchases, leases, or rentals
32 of goods, services, or real property, if that information is disclosed,
33 or is intended to be disclosed, with any identifying information,
34 such as the individual’s name, address, telephone number, or social
35 security number or information, such as a list of names and
36 addresses, that is derived using any nonpublic personal
37 information other than publicly available information, but does
38 not include any list, description, or other grouping of consumers,
39 or publicly available information pertaining to them that is derived
40 without using any nonpublic personal information.

(i) “Third party” or “third parties” means any of the following:

(1) A business that is not more than fifty percent owned or that is not otherwise controlled by the business that has an established business relationship with a customer.

(2) A business that has a chief executive officer or corporate president that differs from the chief executive officer or corporate president of the business that has an established business relationship with a customer.

(3) A business that is a separate legal entity from the business that has an established business relationship with a customer.

SEC. 3. Section 1798.83 of the Civil Code is repealed.

SEC. 4. Section 1798.83 is added to the Civil Code, to read:

1798.83. (a) Except as otherwise provided in subdivision (c), if a business has an established business relationship with a customer and intends to disclose, has within the immediately preceding 12 months disclosed, or is currently disclosing the customer’s personal information to third parties and if the business knows or reasonably should know that the third parties will use, have used, or are using the personal information for direct marketing purposes, that business shall, within 30 days after the receipt of a written request from the customer, provide all of the following to the customer free of charge:

(1) In writing, the name and address of the source or, if the source cannot be determined from currently available data, a list ~~of the names and addresses of the likely sources of the customer’s personal information that has been disclosed during the immediately preceding 12-month period, is being disclosed, or the business has committed to disclose to third parties for direct marketing purposes.~~ *of the names and addresses of the businesses from which direct marketing information was obtained during the immediately preceding 12-month period.*

(2) True and correct copies of the customer’s personal information that was, is, or the business has committed to disclose to third parties for direct marketing purposes and that is in the possession, custody, or control of the business at the time of the customer’s request. *If the business represents to the customer in writing that it cannot provide true and correct copies of the customer’s personal information because direct marketing information is not searchable by individual names, the business*

1 *shall provide a description of the kind of information disclosed*
2 *during the immediately preceding 12-month period, including, but*
3 *not limited to, whether name and address, items the customer*
4 *purchased, social security number, telephone number, income, or*
5 *financial information was disclosed, either directly, or indirectly*
6 *by providing a third party a list of customer names and addresses*
7 *pursuant to the third party's criteria.*

8 (3) In writing, the names and addresses of the recipients of the
9 disclosed personal information and what product or service the
10 recipient provides or markets.

11 (b) No business may condition the sale of goods, services, or
12 other things of value on the customer's consent to the disclosure
13 of the customer's personal information to third parties for direct
14 marketing purposes, or on the customer's waiver of any provision
15 of, right conferred by, or obligation imposed by this title.

16 (c) (1) *If the business required to comply with subdivision (a)*
17 *may not lawfully disclose direct marketing information to third*
18 *parties, the business may comply with subdivision (a) by informing*
19 *the customer of the existence of the legal authority that prevents the*
20 *disclosure, providing the customer a copy of the legal authority,*
21 *and affirming in writing that the business is in compliance with the*
22 *legal authority.*

23 (2) *If, after the effective date of this title the business required*
24 *to comply with subdivision (a) adopts and discloses to the public*
25 *in its privacy policy, a policy of disclosing direct marketing*
26 *information only to affiliated businesses that share the brand name*
27 *as the business required to comply with subdivision (a), so long as*
28 *the business maintains and discloses that a policy, the business*
29 *may comply with subdivision (a) by providing the customer a list*
30 *of all of the affiliated brand name companies and a description of*
31 *the kind of information disclosed during the preceding 12-month*
32 *period, including, but not limited to, whether name and address,*
33 *items purchased, social security number, telephone number,*
34 *income, or financial information is disclosed either directly, or*
35 *indirectly by providing a third party a list of customer names and*
36 *addresses pursuant to the third party's criteria.*

37 (3) *If, after the effective date of this title the business required*
38 *to comply with subdivision (a) adopts and discloses to the public*
39 *in its privacy policy, a policy of not disclosing direct marketing*
40 *information to third parties unless the customer affirmatively*

1 *agrees to such disclosure, or of not disclosing direct marketing*
2 *information to third parties if the customer has exercised an option*
3 *that prevents that information to be disclosed to third parties, and*
4 *the customer has either not affirmatively agreed or has exercised*
5 *his option to prevent those disclosures, as long as the business*
6 *maintains and discloses the policies the business may comply with*
7 *subdivision (a) by notifying the customer that the business is not*
8 *permitted to disclose that information to third parties per the*
9 *customer's instruction.*

10 (d) The following shall not be deemed to be a disclosure of
11 personal information by a business for purposes of this title:

12 (1) Disclosures pursuant to contracts or arrangements
13 pertaining solely to any of the following:

14 (A) The storage, management, or organization of personal
15 information, where the personal information is not further
16 disclosed to third parties.

17 (B) The creation or distribution of marketing or advertising
18 materials for products or services to be offered by the business to
19 customers with whom the business has an established business
20 relationship.

21 (C) The completion of a transaction, not otherwise prohibited
22 by law, between the business and a customer with whom it has an
23 established business relationship or between the business and a
24 new customer if the customer has initiated the transaction.

25 (2) Disclosures of payment history or other information
26 pertaining to transactions or experiences between the business and
27 a customer to a consumer reporting agency where that information
28 comprises a consumer report, as defined in subdivision (d) of
29 Section 1681a of Title 15 of the United States Code, and use of that
30 information is limited by the federal Fair Credit Reporting Act.

31 SEC. 5. Section 1798.84 of the Civil Code is amended to read:

32 1798.84. (a) Any waiver of a provision of this title is contrary
33 to public policy and is void and unenforceable.

34 (b) Any customer injured by a violation of this title may
35 institute a civil action to recover damages and, if a violation of
36 Section 1798.83 is alleged, to recover a civil penalty not to exceed
37 three thousand dollars (\$3,000) per violation.

38 (c) Any business that violates, proposes to violate, or has
39 violated this title may be enjoined.



1 (d) A prevailing plaintiff in any action commenced under
2 Section 1798.83 shall also be entitled to recover his or her
3 reasonable attorneys' fees and costs.

4 (e) The rights and remedies available under this section are
5 cumulative to each other and to any other rights and remedies
6 available under law.

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